

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

FAO.No. 116 of 2003()

AGAINST THE ORDER DATED 23/07/2003 IN IA.488/2003 IN
AS.97/2003 of SUB COURT, NEYYATTINKARA
.....

APPELLANT: PETITIONER:

PUSHPAM OMANAKUNJU, D/O. LOUIS,
D.P. COLLGE, HAVING RESIDENCE ALSO
AT THURUTHIMOOLA THEKKETHATTU PUTHEN BUNGALOW,
CHERIAKOLLA DESOM, KUNNATHUKAL VILLAGE,
NEYYATTINKARA TALUK.

BY ADV. SRI.P.S.VASAVAN PILLAI

RESPONDENTS:

1. KUNJU KRISHNAN NADAR GOVINDAN NADAR,
VALLIKKALA PATTARIKATHU PUTHEN VEEDU,
KARIKKAMANCODE, KUNNATHUKAL,
NEYYATTINKARA TALUK.
2. GOVINDAN NADAR SUGATHAN,
RESIDING AT DO. DO.
3. REENA, W/O. SUGATHAN, RESIDING AT DO.

BY ADV. SRI.G.SUDHEER

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

F.A.O.No.116 of 2003

Dated this the 29th November, 2007.

J U D G M E N T

The plaintiff in O.S.No.989/1999, on the file of the II Additional Munsiff's Court, Neyyattinkara, is the appellant. The appellant filed suit for declaration of his title and also for injunction. During the pendency of the suit, there was an order of injunction restraining the respondents from committing waste. The suit was dismissed on 19.2.2003. Challenging the decree and judgment passed in the suit, the appellant filed A.S.No.97/2003. In the appeal, the appellant filed I.A.No.488/2003 for an order of temporary injunction restraining the respondents from committing waste. The lower appellate court dismissed the injunction application. Challenging that order, this appeal is filed.

2. The learned counsel appearing for the appellant has argued before me that the lower appellate court went wrong in considering the case on merits. It is argued that throughout the pendency of the suit, there was an order of interim injunction and the lower appellant court ought to have at least directed the parties to

maintain status quo and dispose of the appeal on merits. The petition for injunction was dismissed on 23.7.2003. Challenging that order, this appeal was filed on 28.8.2003. It was admitted on 29.8.2003. In I.A.No.1438/2003, this Court has passed an order of injunction restraining the respondents committing waste in the suit properties. That order is in force till now. So, I am of the view that without considering the case of the parties on its merit, the proper course open to me is to maintain the interim passed by this Court and direct the appellate court to dispose of the appeal within a time frame.

In the result, the appeal is disposed of directing the lower appellate court to hear and dispose of the appeal, as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this judgment, untrammelled by any observations contained in the interim order passed by it, in I.A.No.488/2003. The interim order of injunction passed by this Court on 29.8.2003 shall stand extended till the disposal of the appeal.

**K.PADMANABHAN NAIR,
JUDGE**

nj.